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Attorneys for Defendant Facebook, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

1 LAURA LOOMER,

2 Plaintiff,

3 v.

4 FACEBOOK, INC.,

5 Defendant.

Case No. 4:20-cv-03154-HSG

**JOINT INITIAL CASE MANAGEMENT
STATEMENT**

Date: July 7, 2020

Time: 2:00 pm

Courtroom: Courtroom 2, 4th Floor

Judge: The Honorable Haywood S. Gilliam, Jr.

DAVIS WRIGHT TREMAINE LLP

The parties jointly submit this INITIAL CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern District of California and Civil Local Rule 16-9:

1. Jurisdiction and Service

The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. The parties are citizens of different states (Plaintiff of Florida and Defendant of California), and the amount in controversy exceeds \$75,000. Facebook does not contest service in this case.

2. Facts

Plaintiff's Statement: This case is primarily about alleged defamation, not the couched mischaracterizations set forth below by Defendant Facebook, Inc.

Defendant's Statement: Defendant Facebook, Inc. requires users to comply with the Community Standards published on its platform, including the Dangerous Individuals and Organizations ("DIO") policy. The DIO policy bars from Facebook organizations or individuals involved in "organized hate," and states that Facebook does not permit "content that praises" or "coordination of support for" any of these "organizations or individuals or any acts committed by them."

Plaintiff Laura Loomer is a self-described "Guerrilla-style" journalist and "conservative Jewish female activist," who is currently running for Congress in Florida. She frequently makes controversial statements on social media, including, for example: (1) describing herself with the hashtag "#ProudIslamaphobe" after stating "let me be the first to say I never want another Muslim entering this country EVER AGAIN!" and calling Muslims "savages" on Twitter; (2) calling Islam "a cancer on society" on Instagram; and (3) along with her associates, protesting California Governor Gavin Newsom's immigration policies at the Governor's Mansion in Sacramento, California while wearing sombreros, serapes, and fake moustaches—and streaming the incident on social media. As a result of these and similar events, Ms. Loomer has been banned from multiple

technology platforms for violating their Terms of Service, including Twitter, PayPal, Lyft, GoFundMe, Venmo, Medium, TeeSpring, Periscope, Uber, and Uber Eats. *See, e.g.*, ECF No. 25-5 at 3-4.

On May 2, 2019, Facebook removed Ms. Loomer's accounts from its platforms, along with the accounts of several other individuals, upon determining that they had violated Facebook's DIO policy. Facebook's decision to remove these accounts was covered by several media outlets, including CNN Business, which quoted a Facebook spokesperson describing the removals as saying: "We've always banned individuals or organizations that promote or engage in violence and hate, regardless of ideology." Several other news outlets also reported examples provided by Facebook of some of the reasons for deactivating the accounts of each individual. For Ms. Loomer, Facebook told news organizations that she had appeared with Gavin McInnes (the leader of the far-right "Western chauvinist" organization called the "Proud Boys"), and expressed support for Faith Goldy (a far-right political activist who has espoused theories of "white genocide")—both of whom were previously banned from Facebook under the DIO policy.

On July 8, 2019, Ms. Loomer filed this lawsuit in the U.S. District Court for the Southern District of Florida, claiming that Facebook defamed her by: (1) designating her as "a dangerous individual" under the DIO policy; and (2) allegedly implying in the CNN Business article that she had promoted or engaged in violence and/or hate. Ms. Loomer seeks \$35 million in compensatory damages and more than \$3 billion in punitive damages.

3. Legal Issues

Plaintiff's Statement: Its constitutes defamation per se, general defamation, and defamation by implication to publish that a person is a domestic terrorist and dangerous, among other false factual statements. This is an exceedingly simple and straightforward case. And, contrary to Defendant Facebook's agument below, defamation is not protected by the First Amendment.

Defendant's Statement: As set forth in Facebook's Motion for Summary Judgment (ECF No. 54), this case involves the following three legal issues:

- Whether Facebook's statements constitute opinion—which is protected by the First Amendment and non-actionable;
- Whether Ms. Loomer can establish that Facebook made these statements with actual malice, as required to sustain a defamation case against a public figure; and
- Whether Facebook's decision to remove Ms. Loomer's accounts—which underlies Ms. Loomer's defamation claims—is protected by the First Amendment as well as Section 230 of the Communications Decency Act.

4. Motions

There are two pending motions in this case—Facebook's motion to dismiss under Rule 12(b)(6) (ECF No. 25) and Facebook's motion for summary judgment (ECF No. 54). The motion to dismiss is fully briefed. The parties request that the Court set a schedule for the completion of summary judgment briefing, as proposed in Section 17 *infra*.

5. Amendments to the Pleadings

Plaintiff's Statement: Plaintiff will be moving to allow discovery, as the prior court foreclosed it. What is learned in discovery if leave is granted, may give rise to a motion to amend the pleadings.

Defendant's Statement: The deadline to amend the pleadings under the transferor-Court's Scheduling Order (November 1, 2019) long ago elapsed, and the record is now closed. *See* ECF No. 21 at 1. Accordingly, it would be inappropriate to further amend the pleadings at this stage.

6. Evidence Preservation

Plaintiff's Statement: Plaintiff will preserve all relevant evidence.

Defendant's Statement: Facebook complied with its duty to preserve relevant materials in accordance with the applicable rules and case law. Discovery is now closed.

7. Disclosures

The parties exchanged initial disclosures on August 29, 2019, in compliance with Federal Rule of Civil Procedure 26(a)(1).

8. Discovery

Plaintiff's Statement: See above statement about discovery, notwithstanding Defendant Facebooks misleading recitation below.

Defendant's Statement: Discovery has closed and should not be reopened. Under the transferor-Court's Scheduling Order, the approximate seven-month discovery period closed on February 24, 2020. Ms. Loomer—who had failed to take any discovery¹—filed a motion to extend the discovery deadline by 91 days. See ECF No. 39. On February 28, 2020, the Court denied that motion, finding that “Plaintiff has failed to establish good cause for extending the discovery deadline.” ECF No. 43. Approximately nine hours after the Court denied her request for an extension of discovery, Ms. Loomer filed a nearly identical complaint against Facebook in Florida state court. See *Loomer v. Facebook, Inc.*, Case No. 50-2020-CA-002352-XXXX-MB (Fla. 15th Cir. Ct. 2020) (“*Loomer II*”). Facebook removed *Loomer II* to federal court and marked it as related to the original case. See *Loomer v. Facebook, Inc.*, No. 9:20-cv-80484-RS (S.D. Fla. 2020), ECF Nos. 1, 4. Ms. Loomer tried to remand *Loomer II* to state court, but then voluntarily dismissed the case. See *id.*, ECF Nos. 8, 20.

Ms. Loomer has already had the benefit of a full seven-month period in which she was free to conduct discovery. She failed to do so, and the transferor-Court properly found that she showed

¹ Ms. Loomer never served any discovery requests during the discovery period. Nor did she notice any depositions within the required time frame under the Southern District of Florida's Local Rules.

no good cause for her delay. Instead, Ms. Loomer attempted to abuse the judicial process to get a second bite at discovery against Facebook by filing a frivolous duplicative lawsuit in Florida state court, which she later dismissed. Ms. Loomer should not be rewarded for these legal tactics, which have already required Facebook to expend unnecessary resources defending against a frivolous second lawsuit. Additionally, Facebook has already filed a motion for summary judgment based on the closed record. For these reasons, discovery should remain closed.

9. Class Actions

This case is not a class action.

10. Related Cases

There are two cases related to this action:

- *Loomer II (Loomer v. Facebook, Inc., Case No. 50-2020-CA-002352-XXXX-MB (Fla. 15th Cir. Ct. 2020))*, which, as described *supra*, Ms. Loomer voluntarily dismissed after Facebook removed it to federal court. *See Loomer v. Facebook, Inc.*, No. 9:20-cv-80484-RS (S.D. Fla. 2020), ECF No. 20.

- *Freedom Watch, Inc. v. Google, Inc.*, 368 F. Supp. 3d 30, 34 (D.D.C. 2019): In this case, Ms. Loomer and Freedom Watch sued Facebook, Google, Twitter, and Apple, alleging that they conspired to suppress conservative political views. The District Court dismissed the case and the D.C. Circuit affirmed, holding that the plaintiffs failed to state a colorable legal claim. *See Freedom Watch, Inc. v. Google, Inc.*, No. 19-7030 (D.C. Cir. May 27, 2020). This ruling will be subject to an upcoming petition for rehearing en banc.

11. Relief Sought

Plaintiff seeks compensatory damages “in excess of \$35,000,000”; punitive damages “in an amount to exceed \$3 billion”; attorney fees and costs; and “any such further relief as the Court deems appropriate including preliminary and permanent injunctive relief.” ECF No. 7 at 10.

Defendant denies that Ms. Loomer is entitled to any relief and seeks dismissal, fees, and costs.

12. Settlement and ADR

On March 26, 2020, the parties engaged in a court-ordered mediation conference before Mediator Pamela I. Perry. The case did not settle, and Ms. Perry declared an impasse. *See* ECF No. 53. The parties do not believe that additional mediation or ADR would be beneficial at this time. However, if the Court requires the parties to engage in additional ADR, the parties request a settlement conference with a magistrate judge.

13. Consent to Magistrate

Facebook declined magistrate judge jurisdiction for all purposes on May 19, 2020 (ECF No. 63), and this case was assigned to this Court.

14. Other References

None.

15. Narrowing of Issues

Plaintiff's Statement: A review of the pleadings will demonstrate that this case is clear and simple and does not require narrowing of the issues. The suit is not without basis as Defendant Facebook arrogantly claims.

Defendant's Statement: This lawsuit is without any basis, and should be dismissed in its entirety, based on the motions already pending before this Court (ECF Nos. 25, 54).

16. Expedited Schedule

The parties agree that this case cannot be handled under the Expedited Trial Procedure of General Order 64, Attachment A.

17. Scheduling

Because discovery has closed, the parties propose the following dates for completion of summary judgment briefing, hearing of dispositive motions, pretrial conference, and trial:

Event	Proposed Deadline
Plaintiff's response to Defendant's motion for summary judgment due	August 4, 2020
Defendant's reply in further support of its motion for summary judgment due	August 25, 2020
Deadline for Hearing of Dispositive Motions	September 24, 2020
Pre-Trial Conference	November 20, 2020
Trial	December 7, 2020

18. Trial

Plaintiff has demanded a jury trial. *See* ECF No. 7 at 10. Plaintiff estimates that the trial will take 3-5 days. Defendant contends that this case is inappropriate for trial because there are no disputed issues of fact, and so the case should be disposed of through its pending summary judgment motion.

19. Disclosure of Non-Party Interested Entities or Persons

Plaintiff's Statement: Not applicable.

Defendant's Statement: Facebook has filed its Certification of Interested Entities or Persons per Civil Local Rule 3-15 (ECF No. 62) and restates the following: Other than the named parties in this action, there are no other persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities that have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) any other kind of interest that could be substantially affected by the outcome of this proceeding.

20. Professional Conduct

Both parties' counsel have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Such Other Matters As May Facilitate Just, Speedy and Inexpensive Resolution

None.

Dated: June 30, 2020

Respectfully submitted,

By: /s/ Thomas R. Burke

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